

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

JONG Y. LEE, et al.,

Plaintiffs,

v.

THE BANK OF NEW YORK MELLON FKA)
THE BANK OF NEW YORK, AS TRUSTEE)
FOR THE CERTIFICATEHOLDERS OF)
CWMBS, INC., CHL MORTGAGE)
PASS-THROUGH TRUST 2005-02)
MORTGAGE PASS THROUGH)
CERTIFICATES, SERIES 2005-02, et al.,)

Defendants.

Case No.: 1:16-cv-01197-GBL-JFA

ORDER

THIS MATTER is before the Court on Defendants' Motion to Dismiss (Dkt. No. 17).

For the reasons stated in open court,

IT IS HEREBY ORDERED that the Motion to Dismiss filed by Defendants (1) The Bank of New York Mellon f/k/a The Bank of New York, as Trustee for the Certificateholders of CWMBS, Inc., CHL Mortgage Pass-Through Certificates, Series 2005-02; (2) New Penn Financial, LLC d/b/a Shellpoint Mortgage Servicing, LLC; and (3) Samuel I. White, P.C., as Substitute Trustee (Dkt. No. 17) is **GRANTED IN PART** and **DENIED IN PART**.

First, the Court **DENIES** the motion to dismiss the breach of contract claim based upon a RESPA violation (Count I) because Plaintiffs plausibly alleged a RESPA violation, and plausibly alleged that RESPA was incorporated into the Deed of Trust. Second, the Court **DENIES** the motion to dismiss the RESPA claim (Count II) because Plaintiffs plausibly alleged that Defendants violated RESPA, and RESPA provides a private cause of action for a borrower to seek money damages. Third, the Court **GRANTS** the motion to dismiss the breach of contract

claim based upon a HAMP violation (Count III) because HAMP does not create a private cause action and its regulations took effect after Plaintiffs executed the Deed of Trust. Fourth, the Court **GRANTS** the motion to dismiss the claim for breach of the implied covenant of good faith and fair dealing (Count IV) because Plaintiffs fail to sufficiently allege that Defendants acted dishonestly or in bad faith. Fifth, the Court **DENIES** the motion to dismiss Samuel I. White, P.C. from this suit.

IT IS SO ORDERED.

ENTERED this 10th day of November, 2016.

Alexandria, Virginia
11 10 / 2016

/s/
Gerald Bruce Lee
United States District Judge